

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:07CR3165
)	
v.)	
)	
JOSE RAMIREZ-DOMINGUEZ,)	MEMORANDUM AND ORDER
)	
Defendant.)	

Previously, I gave the defendant an opportunity to amend his 2255 motion because it contained no facts. The defendant responded with an amended motion but the pleadings remain vague and deficient. To the extent that there is any discernible claim, a “run of the mill” sentencing argument is presented. Since the defendant did take a direct appeal, he cannot raise that claim now. See, e.g., Auman v. United States, 67 F.3d 157, 160-61 (8th Cir. 1995) (section 2255 does not provide relief for “garden variety” sentencing issues that were not the subject of a direct appeal). None of the exceptions to this general rule apply here. See United States v. Perales, 212 F.3d 1110, 1111 (8th Cir. 2000) (outlining three exceptions to the rule that ordinary sentencing questions not raised on direct appeal do not present cognizable § 2255 claims). Therefore,

IT IS ORDERED the defendant’s Motion to Vacate Under 28 U.S.C. § 2255 (filing 51) as amended (filing 54) is denied and dismissed with prejudice. A separate judgment will be issued.

DATED this 23rd day of June, 2009.

BY THE COURT:

s/Richard G. Kopf
United States District Judge